

# **EXHIBIT**

# **A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE: BLUE CROSS BLUE SHIELD  
ANTITRUST LITIGATION  
MDL 2406**

:  
: **Master File No. 2:13-cv-20000-RDP**  
:  
:  
:  
: **This document relates to**  
: **Subscriber Track cases**

**DECLARATION OF JENNIFER M. KEOUGH  
REGARDING NOTICE PLAN AND SETTLEMENT ADMINISTRATION**

I, JENNIFER M. KEOUGH, declare as follows:

1. I am Chief Executive Officer (“CEO”) of JND Legal Administration LLC (“JND”). JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class action cases.

2. JND was appointed as the Notice and Claims Administrator<sup>1</sup> in the above captioned litigation for the purposes of administering the Settlement Agreement, dated October 30, 2020, which was approved preliminarily by the Court in its Memorandum Opinion and Order Preliminarily Approving Settlement, Plan of Distribution, and Notice Plan, and Directing Notice to the Class, dated November 30, 2020 (“Preliminary Approval Order” or “Notice Order”).

3. I previously filed a Declaration Regarding Proposed Notice Plan, dated October 30, 2020 (“First Keough Declaration”). This Declaration is being filed to report on the implementation of the Notice Plan and the results of that plan to date. It is based on my personal knowledge, as

---

<sup>1</sup> Unless otherwise noted, capitalized terms have the same meaning as in the Settlement Agreement.

well as upon information provided to me by experienced JND employees, and if called upon to do so, I could and would testify competently thereto.

### **I. NOTICE PLAN SUMMARY**

4. The Notice Plan that was designed and executed by me and other JND team members under my direction, and which was approved by the Court as noted in Paragraph IV.G. of the Notice Order, included a substantial direct notice effort, an extensive consumer and entity media campaign, and other extended efforts. The Notice Plan ran from March 26, 2021, through May 31, 2021. Since that time, we have been implementing a reminder notice program. In my experience, this is one of the most comprehensive overall notice programs ever in a class action settlement.

5. The direct notice effort included postcard and/or email notice to all Damages Class Members for whom the Settling Defendants provided contact information. In total, we sent more than 100 million direct notices.

6. The media campaign included: (a) a combination of digital ads (English and Spanish) placed on the leading digital network (Google Display Network – “GDN”) and the top social media platform (Facebook); (b) a full-page color notice in two popular magazines (People and Better Homes & Gardens); (c) 30-second radio spots (English and Spanish) broadcast through a leading satellite radio provider, two premiere radio networks, syndicated programming in the top ten African American markets, and two leading Spanish radio providers in the top ten Hispanic markets; (d) digital ad impressions served on two major streaming audio services; and (e) a 30-second television spot broadcast on a variety of popular cable networks, syndicated programs, and network morning news programming.

7. The entity media campaign consisted of digital notice placements with the leading professional social media platform (LinkedIn) and top business and human resource websites, as well as industry e-newsletters.

8. Extended efforts included a third-party outreach effort to a purchased list of HR/employee benefit and other relevant job titles, an internet search campaign, a multichannel news release (“MNR”), and a link to the Settlement Website that was placed on BCBS.com by Settling Defendants.

9. Immediately following the conclusion of the Notice Period, JND began sending reminder email notices to potential Damages Class Members who had not yet filed a claim or opted out of the Class. JND will continue to send such reminder email notice to Damages Class Members until just before the November 5, 2021 claims filing deadline. In addition, a media claims stimulation effort will be implemented closer to the November 5, 2021 claims deadline to remind potential Damages Class Members of that approaching claims deadline.

10. JND established and has maintained a dedicated Settlement Website for this case where information about the Settlement, as well as copies of relevant case documentation, including but not limited to the Settlement Agreement, the Plan of Distribution, the Long Form Notice, and the Claim Form, are accessible to Class Members. The Settlement Website also is the main mechanism for claim filing in this Settlement and Damages Class Members are encouraged to file claims online through the secure Settlement Website portal. The website is ADA-compliant and mobile-enabled. In addition, JND created a QR Code (a matrix barcode) that allowed for quick and direct access to the Settlement Website through mobile devices.

11. JND also established and has maintained two P.O. boxes, an email address, and a toll-free telephone number with dedicated operators available Monday through Friday between

9:00 am and 5:30 pm Central Time. During non-business hours, an Interactive Voice Recording system (“IVR”) is available so that Class Members can listen to a menu of options providing various information about the Settlement and can also request a Long Form Notice and Claim Form.

12. To date, more than 6 million claims have been filed, 99% of which have been filed online. Claims have been filed from all fifty states and territories. Based on my experience in developing and implementing class notice programs, I believe the Notice Plan met, and exceeded, the standards for providing the best practicable notice in class action settlements. The specifics of the Notice Plan are discussed in detail below.

## **II. NOTICE PLAN IMPLEMENTATION DETAILS**

13. According to this Court’s Notice Order, Notice was scheduled to begin once Defendants, or their representatives, produced a “complete set of Class Member Data” to JND. The deadline for submitting that complete set of data, per the Notice Order, was March 1, 2021. After such receipt, JND had three months, until May 31, 2021, to implement the Notice Plan. Therefore, once the Notice Order was granted in late November 2020, JND began as much up-front work as possible to prepare for the commencement of Notice.

14. For example, we began immediately building the framework for the Settlement Website, which needed to be able to withstand tens of millions of “hits,” developing telephone operator scripts from the Settlement Agreement and other case documents, preparing for printing and emailing the Notice to tens of millions of potential Damages Class Members, and making sure that we would be able to procure the necessary media ad space on a multitude of platforms. However, the most daunting task in preparing for Notice was parsing the Damages Class Member

data we were expecting to receive here. It was imperative that we did as much up-front work as possible to be ready for the transfer of all data by March 1, 2021.

**A. DATA TRANSFER**

15. Handling notice and administration in this case required the processing of hundreds of millions of pieces of data from some 35 different Blue Cross Blue Shield (“BCBS”) entities (“Blue Plans”).<sup>2</sup> The production of data involved many steps. First, each Blue Plan was required to submit its data to Defendants’ data expert, Charles River Associates (“CRA”). Second, because social security numbers and dates of birth were not going to be supplied to JND, CRA performed some data analysis and preparation prior to transmitting the data to JND. Third, JND and CRA needed to work together so that the data could be transferred to JND in a way that would allow us to apply our deduplication process to the files and to perform the necessary printing and mailing, as well as emailing of Notice.

16. To facilitate this transfer, JND and CRA, together with various counsel for the parties, began having weekly conference calls in December 2020, so that JND could understand how the data was being assembled by CRA and how it would be transferred to JND. I personally attended these calls. Other participants, at times, from JND included my partner, Neil Zola; Darryl Thompson, JND’s CIO; Derek Dragotta, JND’s Vice President of Information Security; and Thomas Rentzeperis, JND’s IT Director.

17. Because of the very tight timeline for JND to effectuate Notice once the data was actually produced, we requested test files from CRA so that we could identify potential issues in the production before we received actual data. We asked CRA to produce this test data to JND for multiple, different Blue Plans — as well as a statistically reliable sample size for each — so that

---

<sup>2</sup> We actually received data from 37 Blue Plans, but two such plans appeared to be subsumed by other BCBS Plans.

JND could examine the exact fields of data that were being produced in the varying forms that they were kept by different Blue Plans over the life of the Settlement Class Period after CRA's initial work with the data was completed. This helped us plan how we were going to take some 400 million Class Member records and develop a Class List complete with contact information and plan of allocation data, while simultaneously resolving as much duplication as possible.

18. Complicating this test file production was that the parties were simultaneously working with JND to obtain an additional cyber insurance policy to protect any data being produced to JND. In order to effectuate production of test data prior to that policy being in place, JND set up two standalone computer terminals, segregated in offices with cardkey access, so that files could be transmitted via hard drive that would be loaded onto the terminals to only be accessed and reviewed by Darryl Thompson and Thomas Rentzeperis. The first hard drive containing sample data arrived on January 19, 2021. These initial hard drives provided us a better understanding of the data that we would eventually receive.

19. CRA began producing actual data to JND on February 13, 2021. For every file received from CRA, JND applied 16 separate data validation checks that we designed as a result of the test data we received to identify potential data issues with the provided files. Data issues JND checked for included, among others, missing primary member flags (used to determine if an individual is a subscriber being noticed or a non-subscriber member), subscriber IDs with no covered member record (used to identify which individual within a subscriber group is the subscriber receiving notice), covered member records without member demographic data (indicating an individual exists that should be noticed but no demographic data was provided for that individual), and employer groups with no member counts data (indicating an employer group exists but has no associated subscribers).

20. This process was very time intensive, particularly because of the volume at issue. Between February 13, 2021, and March 1, 2021, JND received from CRA a total of 57-member demographic data files containing in excess of 430,000,000 records associated with 35 Blue Plans. Of the 57 files provided, 52 were original member demographic data files and five were replacement files for the original member demographic data. Although the production was supposed to be complete on March 1, 2021, beginning on March 2, 2021, and continuing through May 25, 2021, JND received from CRA an additional 22-member demographic data files containing in excess of 58,000,000 member demographic records belonging to 11 of the 35 Blue Plans.<sup>3</sup> These 22 files were comprised of 12 replacement files (complete replacements of previously provided data) and 10 supplemental files (additional data for previously provided files). Thus, in total, we received 79 separate files of member data, 17 of which were complete replacement files, requiring us to jettison any work we had done to that point on those original files and begin anew once we received the replacement files.

21. In several instances, the replacement files contained less data than the original files. Therefore, after processing all member demographic data files, the total member population was in excess of 420,000,000 records.

22. In addition to this member data, between February 13, 2021, and March 1, 2021, JND received 48 data files containing in excess of 8,900,000 employer group records belonging to the 35 Blue Plans. Of these 48 files provided, 44 were original demographic group data and four were replacement files for original demographic group data. Between March 2, 2021, and May 25, 2021, JND again received an additional 17 data files containing approximately 1,000,000

---

<sup>3</sup> The production of data continued into June and July as well. We received our last file from CRA on July 30, 2021.



employer group records belonging to 11 of the 35 Blue Plans. Of these 16 files provided, 9 were replacement files and 8 were supplemental files to the original data.

23. As with the member data files, in many instances, the replacement group files contained less data than the original files, resulting in a slight reduction in the overall group data population of approximately 8,700,000 records. Thus, JND received a grand total of 144 separate data files containing nearly 430,000,000 records that formed the basis for JND's work to develop the Class List here.

24. As explained above, CRA was charged with performing initial analysis and data preparation of its files. Based on JND's experience in handling class action mailings, JND was trusted by the Parties to institute deduplication measures based on and in accord with industry best practices to combine records so that we could reduce duplicate mailings.

#### **B. DEDUPLICATION EFFORTS**

25. In performing deduplication on each Blue Plans' member demographic data, JND's expertise was applied. JND analyzed the data provided by CRA and determined the following rules would be most effective at identifying member demographic records that were, in fact, for the same individual. JND took special care to ensure that records with similar information were not erroneously associated and denoted as duplicates. To accomplish this, JND first compared full name and address (first name, last name, street, address2, address3, city, state, and zip). Next, JND compared partial name, partial address, and a hashed Individual Unique Identifier or hashed DOB (first 3 characters of first name, last name, first 10 characters of street, city, state, and hashed Individual Unique Identifier or hashed DOB). Finally, JND compared first name, partial address and hashed Individual Unique Identifier or hashed DOB (first name, first 10 characters of street, city, state, and hashed Individual Unique Identifier or hashed DOB).

26. For cross plan deduplication, meaning reducing duplication not just within individual plans but across multiple plans, JND again analyzed the data to determine the most effective rules in order to achieve the highest quantity of deduplication while not deduplicating individuals that were not conclusively the same person. Because each plan organizes its data in a distinct manner, JND had to be very careful when searching for names and addresses across plans to make sure that the deduplication was effective without losing any class member information. Since the data came from some 35 different sources, this was one of the biggest challenges in the deduplication effort. The first cross plan deduplication JND performed was on partial name, partial address, and hashed Individual Unique Identifier (first three characters of first name, last name, first 10 characters of street, city, state, and hashed Individual Unique Identifier). JND next compared first name, partial address, and hashed Individual Unique Identifier (first name, first 10 characters of street, city, state, and hashed Individual Unique Identifier). The third compare JND performed was full name and hashed Individual Unique Identifier (first name, last name, and hashed Individual Unique Identifier). The fourth compare JND performed was first name, hashed Individual Unique Identifier, and hashed DOB (first name, hashed Individual Unique Identifier, and hashed DOB). The final cross plan comparison JND performed was last name, hashed Individual Unique Identifier, and hashed DOB (last name, hashed Individual Unique Identifier, and hashed DOB).

27. As explained above, we received 420-million-member records. JND was able to identify 235 million as primary members. Using the deduplication techniques outlined above, JND was able to reduce the number of unique records associated to primary members to 131 million. At that point, JND then performed an advanced credit bureau address search against all unique records for which an email address was not included, to identify a current mailing address.

JND also performed a United States Postal Service (“USPS”) National Change of Address (“NCOA”) search to identify recent address changes and obtain the best possible postage rate from the USPS.<sup>4</sup> After address cleanup and standardization, JND combined the individual Blue Plan member demographic data to perform a second deduplication process. This allowed JND to refine the member demographic data to just over 100.3 million unique Damages Class Members according to the Settling Defendants’ productions.

28. For the employer group data, we were able to refine that data set from over 8.7 million records to just over 2.6 million employer group records. In total, we entered the notice phase of the program with approximately 103 million Damages Class Member records, a reduction of more than 75% from what was produced to us by CRA, thus saving the program tens of millions of dollars in potential postage charges alone.

29. We believe the deduplication process was very effective here, particularly considering the vast amount of data involved, the condensed time period for performing the mailing, the fact that we received multiple replacement files, and the fact that we continued to receive tens of millions of pieces of data even after the deadline for production and while we were in the middle of performing the actual mailings.

### C. DIRECT NOTICE

30. As explained in detail below, direct notice was accomplished through a postcard mailing and/or via email. Both notices provided important summary information about the Settlement, including its terms, important dates, and how to participate. Both notices also directed potential Class Members to the Settlement Website, where detailed information was available,

---

<sup>4</sup> The NCOA database is the official USPS technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

including all of the Settlement documents and an extensive Frequently Asked Questions (“FAQ”) section. For people with additional questions, both notices provided a toll-free telephone number, and a dedicated email address so that people could ask additional specific questions. Finally, both notices included a Spanish-language tag that directs Spanish-speaking Damages Class Members to the Settlement Website, which is available in Spanish.

### **Postcard Mailing**

31. The Notice Order provided that JND would mail postcard notice to all potential Damages Class Members identified in Settling Defendants’ data where a mailing address was available, and no email address was available. In addition, we were to send a postcard to all Damages Class Members where an email address was available, but the email bounced back. Based on the data received from Settling Defendants, there were far more post office addresses than email addresses for this population, making the largest component of the direct notice program the postcard printing and mailing.

32. Postcards have become a much-used mailing vehicle in class action settlements. This is largely because of the enormous cost savings, particularly in postage, when sending a postcard rather than an envelope mailing. However, in order to make sure that a class action notice postcard is not discarded as junk mail, it is important to make it stand out. Here, we used several design elements for that purpose. First, this was not a standard two-sided postcard where all information was open to anyone who saw the postcard. Rather, we used a double-panel, sealed postcard so that the JND Unique record ID was hidden from public view. This required the formatting of four separate postcard panels that were printed, folded, and sealed for privacy. Second, the postcard design included blue color highlights and different fonts. Third, we also

utilized the BCBS logos, permissions for which were provided by Settling Defendants' Counsel. Attached as Exhibit A is the Postcard Notice.

33. Another element that really stood out here was JND's creation of a QR Code (a matrix barcode) that allowed quick and direct access to the Settlement Website through mobile devices. While QR Codes have been used in settlement notice programs before, the general public has not been completely familiar with them. Interestingly, the timing of the COVID-19 pandemic increased the utility of the QR Code here. That is because restaurants throughout the country started using QR Codes during the pandemic instead of paper menus to decrease touch points among customers. Thus, these QR Codes entered the mainstream like never before.<sup>5</sup>

34. Printing a postcard with this many design elements and with volume in the tens of millions requires very exact formatting so that the massive print presses can continue to run without interruption and without error. One of the biggest potential dangers is formatting a postcard without enough white space in the margin where the machinery can cut off a piece of the language. Therefore, we ran substantial test batches and formatted and reformatted the postcard several times to make sure that there would be no "bleed." Also, digital production samples of the postcards were reviewed for accuracy of the data file merge and the notice content, as approved by the Court. Once formatting and test printing was complete, we moved into production mode, with significant auditing on the printing floor to pull batches of printed postcards to confirm name, address, mailing barcodes, JND Unique record ID, and the QR code that leads to the Settlement Website. Additionally, we confirmed that each printing used the correct BCBS blue, Pantone Matching System color 2995. We began printing and mailing postcards on March 29, 2021.

---

<sup>5</sup> We also included QR codes in other elements of the Notice Program, including the media print ads, as discussed below.

35. Continued production of data after the March 1, 2021 deadline complicated this process. As we received this new and updated data, we had to ready new files for printing and we had to do our best to continue the deduping process, even as tens of millions of notices were already in the mail.

36. In all, this was one of the largest notice mailings ever in the history of class action administration. From March 29, 2021, through May 28, 2021, JND mailed the Postcard Notice to 77,360,606 Damages Class Members for whom an email address was not known at the time of the mailing or for whom the email notice was deemed ultimately undeliverable.

37. As explained above, prior to printing and mailing, JND updated all addresses with the most current available information from both a credit bureau advanced level search and also the USPS NCOA search. One of the benefits of the NCOA search is that in addition to providing updated address information it allows a company to group print files by region and ZIP code, thus enabling discount postage rates.

38. Here, the NCOA search, coupled with our analysis of Blue Plan data files and grouping of records into geographic zones by ZIP code, allowed for saturation of the mail stream to obtain maximum postage savings. As a result, our overall blended postage rate was substantially reduced from the standard USPS postcard rate. Based on the enormous volume here, the reduced postage rate yielded a savings of several millions of dollars.

39. Due to all the work that went into perfecting the mailing database in accord with industry standards, including obtaining the best address possible for each individual through credit bureau search and NCOA, the undeliverable rate here was relatively low, particularly considering that this Class stretches back to 2008 thus saving substantial remail printing and postage fees. As of August 26, 2021, only 5,803,408 Postcard Notices, less than 8%, were returned undeliverable

by the USPS. Of that amount, 779,551 were promptly re-mailed to the forwarding address provided by the USPS.

40. Thus, of the 77,360,606 Postcard Notices sent, 72,336,749 or 93.5% were delivered.

**Email Notice**

41. As explained above, the Notice Order directed JND to send email notice to any potential Damages Class Members where the data from Settling Defendants included a valid email address. Attached as Exhibit B is the Email Notice.

42. As detailed in the First Keough Declaration, JND uses industry-leading email solutions to achieve the most efficient email notification campaigns. Among some of the steps we took here to ensure high deliverability of the Email Notice were the following: (1) JND worked with Plaintiffs' Class Counsel to craft the Email Notice to avoid spam language to improve deliverability, including running the email through spam testing software, DKIM for sender identification and authorization, and hostname evaluation and checked the send domain against the 25 most common IPv4 blacklists; (2) we used a verification program to eliminate invalid email and spam traps that would otherwise negatively impact deliverability; (3) the email content was formatted and structured in a way that receiving servers expect, allowing the email to pass easily to the recipient; (4) we avoided the use of attachments, which can send an email right to spam, and instead provided a call-to-action button (i.e., "File a Claim"), as well as direct links to the Settlement Website for more detailed information; (5) with the exception of the recipient name, we avoided the use of all capitalization, exclamation points, colored font, case-caption boxes, excessive legalese, and common trigger words to reduce spam; (6) we created an email subject line identifying the Defendant, with whom the email recipient is very familiar; (7) we used the

Damages Class Member's name as the email opener to authenticate and personalize the email; (8) to ensure readability of the Email Notice, our team reviewed and formatted the body content into a structure that is applicable to all email platforms; (9) before commencing the email notice campaign, we sent a test email to multiple ISPs and opened the email on multiple devices (iPhones, Android phones, desktop computers, tablets, etc.) to ensure the email opens as expected; and (10) JND included an "unsubscribe" link at the bottom of the Email Notice.

43. Despite all of these best efforts, sometimes emails will not go through on the first attempt. Emails that are returned to JND are generally characterized as either "Soft Bounces" or "Hard Bounces." Hard Bounces are when the ISP rejects the email due to a permanent reason such as the email account is no longer active. Soft Bounces are when the email is rejected for temporary reasons, such as the recipient's email address inbox is full. When an email was returned due to a soft bounce, JND attempted to re-email the email notice up to three additional times in an attempt to secure deliverability. The email is considered undeliverable if it is a Hard Bounce or a Soft Bounce that is returned after a third resend.

44. Based on all of this work, from March 26, 2021, through May 20, 2021, JND successfully delivered the initial Email Notice to 27,497,063 Damages Class Members.

45. While the direct notice program here was extensive, JND also implemented a comprehensive media notice campaign to supplement the direct notice program, as discussed below.



**D. CONSUMER MEDIA CAMPAIGN**

46. JND designed and implemented a robust consumer media campaign, which alone reached more than 85% of potential members of the Settlement Classes.<sup>6</sup>

47. The consumer media campaign consisted of the following: (a) digital effort (GDN, Facebook); (b) print effort (People, Better Homes & Gardens); (c) radio effort (SiriusXM, iHeart Radio's Premiere Networks, Pandora/Spotify audio streaming, as well as leading syndicated programs in the top ten African American markets and Spanish radio in the top ten Hispanic markets); and (d) television effort (cable, syndicated programming, and network morning news).

**Digital Effort**

48. On April 1, 2021, JND caused the digital effort to launch with GDN and Facebook. The digital effort concluded on May 30, 2021, delivering 427,557,696 impressions to adults 18 years of age or older (Adults 18+) throughout the U.S. via GDN and 30,462,085 via Facebook.<sup>7</sup> A total of 46,146,313 impressions, or 10% of the total impressions, were allocated to Spanish language sites through GDN and Spanish language accounts through Facebook. The digital ads were served across all devices (desktop, laptop, tablet, and mobile), with an emphasis on mobile.

49. Screenshots of the Digital Notices as they appeared on GDN and Facebook in both English and Spanish are attached as Exhibit C.

**Print Effort**

50. The print effort consisted of a full-page color notice placement in the April 26, 2021 issue of People, which was on-sale beginning April 16, 2021, and the June issue of Better Homes

---

<sup>6</sup> Reach is the percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once over the course of a campaign. Reach factors out duplication, representing total different net persons.

<sup>7</sup> Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

& Gardens, which was on-sale beginning May 14, 2021. Both People and Better Homes & Gardens are highly read consumer magazines. JND created a QR Code and placed it prominently within each print notice. This allowed quick and direct access to the Settlement Website through mobile devices.

51. Copies of the Publication Notice as it appeared in People and Better Homes & Gardens are attached as Exhibit D. These publications have a combined monthly circulation of over 11 million.

### **Radio Effort**

52. From April 1, 2021, through May 23, 2021, JND caused approximately 1,299 radio spots to be broadcast through Sirius XM, satellite radio. From April 26, 2021, through May 16, 2021, JND caused 9,048 radio spots to be broadcast through iHeart radio's two Premiere Networks (the Scope and Spectrum networks). Some of the radio formats in which our ads broadcast included Adult Contemporary, Country, and Urban Contemporary. From April 12, 2021, through May 9, 2021, JND caused 159 radio spots to be broadcast on popular syndicated programs among African Americans in the top ten African American markets; and 359 radio spots to be broadcast on two dominant Hispanic radio providers ("SBS" and Univision Radio) in the top ten Hispanic markets. From April 1, 2021, through May 23, 2021, JND caused 10,702,236 impressions to stream through Pandora/Spotify audio services. Attached as Exhibit E are texts of the radio spots in English and Spanish.

### **Television Effort**

53. From April 5, 2021, through May 23, 2021, JND caused 2,625 television spots to be broadcast across a variety of cable networks, including Animal Planet, CBC, Comedy Central, Discovery Channel, HLN, The Weather Channel, and TNT. We were able to get placements on

several marquee programs including “NBA Basketball”, “The News with Shepard Smith”, “South Park”, “PGA Tour Golf”, and “Shark Tank.” From April 26, 2021, through May 21, 2021, JND caused 20 television spots to be broadcast across various syndicated programs including “Wheel of Fortune”, “Wendy Williams”, and “Judge Mathis”. From April 6, 2021, through May 23, 2021, JND caused 26 television spots to be broadcast on network news programming, such as “Today Show”, “CBS This Morning”, and “Good Morning America”.<sup>8</sup> Attached as Exhibit F are the texts of the Televisions spots.

54. As the result of our negotiation with broadcasters, the television effort broadcast 1,702 spots more than what was originally planned for the same price. Additionally, 1,597,028 “bonus” or free impressions were negotiated with NBC Universal to stream through its Over-The-Top Digital Video service.

55. The consumer media campaign alone reached at least 85% of potential Class Members. The extensive direct notice effort, as well as the entity media campaign, the third-party outreach effort, the internet search campaign, and the distribution of the MNR, all of which are discussed below, extended reach and notice exposure further.

#### **E. ENTITY MEDIA CAMPAIGN**

56. To buttress notice to entities/companies/businesses, JND employed a digital effort targeting individuals responsible for filing claims on behalf of entity Damages Class Members, including senior level Human Resources employees who are engaged in handling and managing

---

<sup>8</sup> A total of seven additional network morning news spots aired as “makegoods” due to a local programming change on the ABC stations in five markets: Los Angeles, Phoenix, Portland (OR), San Diego, and Seattle. On Saturday, May 1, 2021, the local ABC stations in the five markets aired the “NFL Draft” instead of “Good Morning America” and preempted the BCBS scheduled spot. The “makegood” spots aired during the week of May 10<sup>th</sup> in network morning news on various affiliates in the affected local markets.

employee benefits and health plan issues for Class Member entities, as well as business owners and partners of Class Member entities.

**Entity Digital Effort**

57. From April 1, 2021, through May 30, 2021, JND caused 957,779 digital impressions to be served through LinkedIn, the leading professional social media platform, and 1,011,906 digital impressions to be served through leading business websites such as Yahoo Business, CNBC.com, FastCompany.com, Forbes.com, Bloomberg.com, Entrepreneur.com, WSJ.com, BusinessInsider.com and AllBusiness.com.

58. From April 1, 2021, through April 25, 2021, JND caused 101,446 digital impressions to be served through the Society for Human Resource Management website (shrm.org). From April 1, 2021, through April 30, 2021, JND caused 155,734 digital impressions to be served through Human Resource Executive (hrexecutive.com). From April 1, 2021, through May 30, 2021, JND caused 35,285 digital Impressions to be served through the National Association of African Americans in Human Resource (NAAAHR.org).

59. Overall, the entity digital effort delivered 81,550 impressions more than what was originally planned.

60. Screenshots of the Entity Digital Notices as they appeared on various websites are attached as Exhibit G.

**Entity E-Newsletters**

61. JND also caused notices to be placed in leading business and healthcare and employee benefits e-newsletters including: the April 6, April 20, May 4 and May 18 issues of Franchise Times; the April 5, April 12, April 19 and April 26 issues of Entrepreneur; the April 7, April 14, April 21, and April 28 issues of Harvard Business Review Management Tip of the Day;

the April 5, April 12, April 19, and May 5 issues of SHRM HR Daily; the April 20, April 27, May 4 and May 11 issues of HREBenefits; the April 29 and May 27 issues of Employee Benefit News Wellness; the April 30 and May 14 issues of Employee Benefit News First Look;<sup>9</sup> the April 19, April 30, May 5 and May 10 issues of Healthcare Dive;<sup>10</sup> the April 6 issue of NAAAHR;<sup>11</sup> and the April 19, April 20, April 21, April 22, and April 23 issues of BenefitsPRO Daily.

62. Overall, the entity e-newsletters delivered 1,777,525 more sends than what was originally planned.

63. Screenshots of the Entity Digital Notices as they appeared in each of the e-newsletters are attached as Exhibit H.

64. As summarized in Exhibit I, the media campaign significantly overdelivered beyond what was originally planned. Overall, we received 32,319,045 bonus consumer digital impressions (includes 30,019,781 digital impressions, 702,236 radio streaming impressions and 1,597,028 television streaming impressions), 1,165 bonus radio spots, 1,702 bonus television spots, 81,550 bonus entity digital impressions, and 1,777,525 bonus entity e-newsletter sends for no additional cost.

## **F. ADDITIONAL EFFORTS**

65. JND undertook additional efforts to further disseminate notice to Class Members, including a third-party outreach effort, a specially designed internet search campaign, and a MNR that worked in tandem with the media campaign to increase awareness of the Settlement. In

---

<sup>9</sup> *Employee Benefit News* changed the name of its e-newsletter from *Healthcare* to *Wellness* and moved its distribution day from Tuesday to Thursday. Two of the issues of *Employee Benefit News Wellness* were sold out at the time of placement. As a result, the sold-out placements were replaced with two placements in *Employee Benefit First Look* e-newsletter.

<sup>10</sup> *Healthcare Dive* weekly e-newsletter was sold out at the time of placement. As a result, the sold-out insertions were replaced with four insertions in *Healthcare Dive In-Line*, which provides a larger audience.

<sup>11</sup> *NAAAHR* is a monthly e-newsletter. Originally two insertions were planned; however, at the time of placement one of the two insertions was sold out. As a result, an extra month of activity was placed at *NAAAHR*'s website.

addition, a link to the Settlement Website was placed on BCBS.com by Settling Defendants. JND will also implement a media claims stimulation reminder effort prior to the claims filing deadline to alert Class Members of the approaching claims deadline.

### **Outreach Effort**

66. JND purchased a list of HR/employment benefit employees, and other relevant job titles through a third-party outreach list provider. On May 7, 2021, JND utilized the information from the purchased list to send mailed notice to over 165,094 contacts. The cover letter that we sent was a personalized letter from me asking for assistance in getting notice out to the constituents of the organizations. In response, I received hundreds of responses directly to me by phone and email asking how they could assist and telling me that they were disseminating notice. A copy of the third party Mailed Notice is attached as Exhibit J.

### **Internet Search Campaign**

67. From April 1, 2021, through May 30, 2021, JND caused 703,008 impressions to be delivered through an internet search effort. When purchased keywords related to the Settlement were searched, a paid ad with a hyperlink to the Settlement Website would sometimes appear on the search engine results page. The search effort was monitored and optimized. For instance, keyword adjustments were made based on user search queries and modifications were made to boost text ad placement specifically between 7am-11:30am, to correspond with the expected increase in site traffic due to the airing of CBS television network AM news spots. A screenshot of the search ad as it appeared is attached as Exhibit K.

### **Press Coverage**

68. On April 6, 2021, JND caused the MNR to be distributed into newsrooms, online syndication, and PR Newswire for Journalists, an exclusive members-only community of more

than 41,000 influential journalists and bloggers. The MNR assisted in getting “word of mouth” out about the Settlement. Additionally, the MNR included online access to the radio and television spots. As of August 13, 2021, the MNR received 16,727 total page views, reaching 13,157 unique users. In addition, the MNR received 199 pickups with a total potential audience of 153,531,155.

69. From October 31, 2020, through May 2021, JND monitored press coverage about the Settlement beyond that of the MNR. JND found there to be extensive news coverage, increasing exposure and reach to Class Members. Overall, we found more than 100 articles covering the Settlement, some of which were picked up by multiple news sources.

70. Exhibit L provides an Earned Media Report summarizing the coverage received from the MNR, as well as articles found through JND’s monitoring. A copy of the MNR as it was distributed in both English and Spanish is also included with Exhibit M.

### **III. CLAIMS STIMULATION EFFORTS**

71. Once the Notice Program was completed, JND immediately began its efforts to encourage those Class Members who had not yet submitted a claim to do so. The best way to stimulate claims is the same as the best way to get out notice – through direct contact with class members. As such, once the Notice Period ended, we began a robust outreach through email. We have done the following on that score: (1) We have been sending reminder emails to all potential Damages Class Members based on the data provided by the Blue Plans. These emails are going to potential Damages Class Members who have not filed a claim or excluded themselves; (2) We conducted an email append process through a credit bureau search and located email addresses for people where the Blue Plans had none. We are sending reminder emails out to this group as well, again, only to individuals who have not yet filed a claim or excluded themselves.

72. In addition, we have continued to follow up with the HR groups. On June 17, 2021, JND utilized the information from our purchased list to send email notice to over 54,155 contacts. A copy of that third-party Email Notice is attached as Exhibit N. We have heard from many representatives who tell us that they are proactively reaching out directly to their members and urging them to file claims.

73. We know that these direct outreach efforts have been working. Since starting the reminder email efforts, we have been receiving approximately 25,000 claims per day.

74. We will continue to perform these efforts until one week before the claims filing deadline. In addition, we plan to institute a reminder mailing to all entities with 30+ owned entities and we will also send a mailing to the largest entities measured by lives under Plans.

75. We will also institute a media reminder campaign. The reminder program consists of People Magazine, radio, a consumer digital campaign, an entity e-newsletter effort, and a press release.

76. The reminder consumer digital campaign includes: (1) targeting to key demographics; (2) retargeting; (3) look-alike targeting; (4) email matching; and (5) a search effort. Digital banner ads will be targeted to demographics that achieved the best key performance indicators (“KPIs”) during the Notice Period, such as click throughs to the Settlement Website and online claims filed; as well as to individuals who visited the Settlement Website but did not complete a claim submission form (retargeting), and individuals who demographically/geographically match with those Damages Class Members who have already filed online claims (look-alike targeting). An audience custom list will also be derived from emails of Damages Class Members who have not yet filed a claim or opted out. These emails will be matched with the emails of our programmatic partner, as well as Facebook and Instagram accounts.



Ads will then be served through our programmatic partner, and across Facebook and Instagram to active matched accounts. The digital search effort will focus on keywords/phrases that achieved the best KPIs during the Initial Notice Plan.

77. The reminder entity e-newsletter effort consists of digital ads being placed in entity e-newsletters that achieved the best KPIs during the Initial Notice Plan (e.g., SHRM HR Weekly, BenefitsPro Daily, Healthcare Dive).

78. Finally, a press release with a claims deadline reminder message will be distributed nationwide to approximately 15,000 media outlets, including both English and Spanish outlets, as well as to Human Resource Influencers who are looking for news on benefits, best practices, diversity, equal opportunity employment, labor relations news, and more.

#### **IV. SETTLEMENT WEBSITE**

79. The overall notice effort was designed to drive people to the Settlement Website, [www.BCBSsettlement.com](http://www.BCBSsettlement.com), where they could find an abundance of information about the Settlement as well as the portal to file a claim online. Considering the size of the Class here, designing the website was a Yeoman's effort because not only did it need to have a user-friendly interface, but it also needed a robust back-end infrastructure to allow its performance to handle millions of hits, all while guarding against cyber-attack. Building the Settlement Website actually required building multiple sites as follows: First, we launched a registration website on December 16, 2020. This provided a mechanism for people who wanted to confirm that they would be receiving notice to provide us with their contact information. Second, on February 5, 2021, we expanded this pre-launch version of the website to include a stylish homepage design, certain FAQs, important documents, and key dates. On March 16, 2021, in anticipation of the start of the actual Notice Program we launched the online claim filing portal, added a section regarding the

Second Blue Bid information and updated the remainder of the site in anticipation of the Postcard Notice mailing. This Launch version of the Settlement Website hosts copies of important case documents including downloadable copies of the Long Form Notice (attached as Exhibit O), the Claim Form (attached as Exhibit P), the Class Action Complaint, the Settlement Agreement, the Plan of Distribution, and the Preliminary Approval Order; contains answers to frequently asked questions; provides key dates; and provides contact information for the Claims Administrator. The Settlement Website also allows Class Members to submit claims electronically through a secure claim filing portal. The Settlement Website is available in English and Spanish. JND's team continuously works on maintenance and optimization of the site to make sure the performance continues to be robust and that all necessary security features are working as required.

80. In addition to reserving the Settlement Website URL – [www.BCBSsettlement.com](http://www.BCBSsettlement.com) – we also reserved hundreds of additional URLs of similar sound and construction in order to prevent them from being used for nefarious purposes. For example, it is not uncommon for bad actors to purposely purchase URL's with common typographical errors in the hopes of luring unsuspecting visitors to the wrong site. These sites may be used to generate advertising revenue using ads and pop-ups, host malware, or even attempt to impersonate or "spoof" an official settlement website. JND also performs searches for URL's potentially related to the BCBS Settlement by using unique search terms. Discovered URL's are then reviewed for suspected phishing, spoofing, and malicious material. In addition, our team continuously monitors the site for suspicious activity.

81. Because the Settlement Website is the easiest and most cost-effective way for Class Members to receive information about the Settlement and Claims process, it was important to make sure people could easily find the site on the Internet. Thus, the Settlement Website was

designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms were included in the site's metadata to maximize search engine rankings.

82. As importantly, the Settlement Website was built to withstand an expected load of millions of "hits." The Settlement Website was built in accordance with industry standard best practices to ensure the security and privacy of information submitted. Secure coding practices and adherence to the Open Web Application Security Project's (OWASP) Top Ten standards were employed throughout the development lifecycle. Penetration testing was also performed to verify the security of the site. The site has been designed in accordance with standard 3-Tier (Web/App/Data) architecture with Web Application Firewalls (WAF) deployed in front of the site to monitor for malicious traffic and security event logs transmitted to a Security Information and Event Management (SIEM) solution. Transport Layer Security (TLS) encryption is employed for all communication with the Settlement Website, and encryption is utilized for communication between the 3 tiers, as well. Additionally, data submitted to the Settlement Website is encrypted when at rest in the database.

83. To make sure everything would work as expected, the Settlement Website was tested using both automated tools and human assessment to comply with best practices found in Web Content Accessibility Guidelines 2.1 and Section 508 of the federal Rehabilitation Act. The site is mobile-enabled and ADA compliant. It was thoroughly tested on various devices and browsers. The Settlement Website also underwent load testing where the simulated user load was run from multiple geographic regions to assess all layers of the site infrastructure, including networking, application, and data storage layers. Testing was done to exceed thresholds of actual traffic from other large projects.

84. JND also retained a reputable, independent, third-party cybersecurity firm to perform penetration testing on the Settlement Website throughout the development and deployment process. These tests were designed to assess, in part, the security of the web application's logic, configuration, software, data flow, authentication, and authorization and were performed using a combination of automated and manual testing methodologies. Automated testing was performed utilizing a combination of tools, such as, web application vulnerability scanners, port scanners, and packet and protocol analyzers. After automated scan results were analyzed, a detailed manual examination of the site was performed utilizing advanced techniques and tactics by GIAC (Global Information Assurance Certification) certified individuals.

85. The Settlement Website has handled load extremely well, with no reports of slowness or latency. As of August 26, 2021, the Settlement Website has tracked 14,844,643 unique visitors, 20,666,254 sessions, and 112,006,163 total pageviews. Also, as explained more fully below, we have received more than 6 million claims via the Settlement Website claim filing portal.

## **V. DEDICATED CALL CENTER AND EMAIL**

86. Other vehicles for handling Class Member inquiries in this case include the call center and an email address, [info@BCBSsettlement.com](mailto:info@BCBSsettlement.com).

87. We established and have maintained a dedicated toll-free telephone number (888-681-1142) with an automated IVR, available 24 hours a day, seven days a week. The toll-free telephone line provides Settlement-related information to Class Members, and the ability to request and receive the Long Form Notices and the Claim Form by mail. Class Members also have the option to speak with Customer Service Representatives five days a week during business hours. These Customer Service Representatives provide Settlement-related information and fulfill requests for notice.

88. Just as with the Settlement Website, we launched the call center in stages. The IVR launched way back on October 30, 2020, when the Preliminary Approval Motion was filed, with a placeholder message “We will be launching the BCBS Settlement phone line soon. Please check back later. Thank you.” The placeholder message was changed on January 26, 2021, to “The Blue Cross Blue Shield Settlement phone line will go live when Class Notice begins in the spring of 2021. Until then, please visit the website [BCBSsettlement.com](http://BCBSsettlement.com) for the most up-to-date information.”

89. The IVR was updated on March 10, 2021, to include the option to leave a voicemail. The full message was “Thank you for calling the Blue Cross Blue Shield Settlement Claims Administrator. Class Notice will begin in the Spring of 2021. For the most up-to-date information, please visit [BCBSsettlement.com](http://BCBSsettlement.com). If you would like to leave a message for the Claims Administrator and receive a return call, please press one to leave a voicemail.”

90. The full Call Center, with live agents, was launched on March 26, 2021, a few days before the Postcard Notice Mailing commenced. The training for telephone agents has been extensive here. With the input of counsel for both sides, JND developed a 29-page telephone script, containing some 136 potential FAQs. The script is continually updated as caller trends suggest new FAQs. Training consisted of classroom sessions, quizzes, games, mock calls, and other simulations. We initially launched the program with 100 operators to handle the expected volume. As the Notice Program progressed, we have increased our staffing to as high as 240 agents on the phones in one day. Operators are available to answer calls in English and Spanish.

91. In addition to the call center agents, JND has escalation phone agents who are available to handle calls transferred from the call center agents. The escalation agents are trained to handle Class Member questions that require more sophisticated knowledge; responses that

require collaboration with counsel and/or the case project team; third-party filer questions; and HR professional calls. More specifically, they handle requests to speak to a supervisor; calls that require clarification beyond the scripted response to questions; upset and/or concerned callers, including those who want to confirm the legitimacy of the Settlement, notice, website, etc., those concerned about providing personal information or inquiring how we received their information, those having difficulty providing information or locating the specific documentation needed to support their claim, and those needing step-by-step or ADA assistance filing a claim. The escalation agents also return calls; assist with inbound calls when the volume is high; identify scripting needs or updates; assist the email team with processing incoming emails and completing call back requests received via email; and handle quality assurance including reviewing and monitoring calls, providing feedback, and coaching to call center agents, completing QA assessments, and other ongoing training.

92. As of August 26, 2021, the toll-free line has received 1,062,431 incoming calls.

93. Similar to the call center agents, JND also has email team agents who handle Class Member, general public, counsel, and business entity email inquiries. The email agents review and respond to incoming emails that are sent in many languages, including Spanish, French, Korean, and Chinese, among others. The email team responds to a multitude of questions. The most common issues revolve around Class Member requests for assistance with filing a claim, modifying a submitted claim, withdrawing a claim, confirming receipt of a Claim Form, address update requests, or questions about other submitted documentation. This team also responds to Class Members who could not be contacted via telephone after multiple attempts, if an email address is on file.

94. As of August 26, 2021, we have received and responded to well over 100,000 emails.

## **VI. OBJECTIONS AND OPT OUTS**

95. JND established two separate United States Post Office Boxes: one dedicated for Class Members to submit letters, inquiries, and Claim Forms; and one dedicated strictly to receive Objections and Opt-Out requests. The deadline to object to or request exclusion (opt out) from the Settlement was July 28, 2021. As of August 31, 2021, JND has received 2,049 timely and valid exclusion requests and 40 timely objections from 123 objectors. Attached as Exhibit Q is a list of timely and valid exclusion requests.

## **VII. CLAIMS RECEIVED**

96. The deadline for filing claims in this case is November 5, 2021. Thus, Class Members still have over two months to file a claim. Nevertheless, JND has already received, as of August 26, 2021, a total of 6,077,526 claims comprised of 177,687 claims reporting that they are filing on behalf of companies/businesses/entities, 1,381,112 claims from individuals reporting that they purchased health insurance directly from a BCBS Company, and 4,194,942 claims from employees. In addition, 323,785 are reporting that they are filing both as an individual who purchased directly and as an employee since their status changed during the Settlement Class Period. This is a very robust filing rate for a class of this size, particularly considering that the claims filing deadline is still more than two months away. The vast majority of claims have been filed online (over 99%). We have also created a program that allows the mass filers to submit on one form (electronically) which significantly streamlines their ability to file en masse.

97. Although we have not yet begun the task of reviewing and evaluating claims, we can report that more than 99% of claims have opted for the default option. We have also analyzed

the geographic dispersion of claims and can report that claims have been filed by Class Members from every state in the country. I believe the overall claim filing results thus far speak to the quality of the Settlement here and the Notice Program.

98. Claims will be calculated using data produced by the Settling Defendants, in accordance with the Plan of Distribution. To the extent more than one claimant attempts to make a claim that would rely on the same data, that will be flagged for resolution by JND.

### **VIII. CONCLUSION**

99. In my opinion, the Notice Program as described herein provided the best notice practicable and is consistent with, if not more robust than, other similar court-approved best notice practicable notice programs, Rule 23 of the Federal Rules of Civil Procedure, and the FJC's guidelines for Best Practicable Due Process notice. It meets due process and Rule 23 requirements to apprise Class Members of the pendency of the Subscriber Actions, the Settlement Agreement, and their opportunity to be heard and to opt out. The Notice Program was designed to reach as many Class Members as practicable and provide them with the opportunity to review a plain language notice with the ability to easily take the next step and learn more about the Settlement and file a claim if they so desire.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 3, 2021, in Seattle, Washington.



---

JENNIFER M. KEOUGH